

CITY OF HORSESHOE BAY

ORDINANCE NO. _____

SUBSTANDARD BUILDING ORDINANCE

AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS, CONCERNING THE REPAIR OR DEMOLITION OF SUBSTANDARD OR UNINHABITABLE BUILDINGS OR STRUCTURES; PROVIDING FOR FINDINGS OF FACT; PURPOSE; DEFINITIONS; DECLARATION; INSPECTION; NOTICE OF VIOLATION; APPLICATION OF STANDARDS; HEARING; ORDER FOR REPAIR OR DEMOLITION; NOTICE OF REPAIR OR DEMOLITION; APPEAL; DEMOLITION AND REPAIR EXPENSES; ASSESSMENT OF LIEN; CRIMINAL PENALTIES WITH MAXIMUM CRIMINAL PENALTY OF \$2,000 FOR VIOLATION AND CIVIL PENALTIES WITH MAXIMUM CIVIL PENALTY OF \$1,000 FOR VIOLATION; LIABILITY; REPEALER; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE AND MEETING.

WHEREAS, the City Council of Horseshoe Bay ("City Council") seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the City of Horseshoe Bay ("City) limits; and

WHEREAS, the City Council seeks to protect property values within the City limits; and

WHEREAS, the City Council finds that substandard buildings or structures pose aesthetic harm to the City; and

WHEREAS, the City Council finds that substandard buildings or structures are fire hazards and often attract vermin and insects; and

WHEREAS, pursuant to the laws of the State of Texas, including Texas Local Government Code section 51.001, the City Council has the authority to adopt, publish, amend or repeal an ordinance that is for the good government, peace or order of the City; and

WHEREAS, pursuant to Texas Local Government Code section 214.001, the City Council has authority to regulate substandard buildings or structures; and

WHEREAS, pursuant to Texas Local Government Code section 214.002, the City Council has authority to order the repair, removal or demolition of a substandard building or structure and to repair, remove, or demolish a substandard structure and assess such costs against the property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Horseshoe Bay and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. PURPOSE

This Ordinance is adopted so that the City Council may promote the public health, safety, and general welfare within the City through the regulation of substandard buildings. By requiring the repair and/or demolition of substandard buildings, the City Council seeks to protect property values and prevent bodily injury, death, and property damage within the City limits.

III. DEFINITIONS

As used in this Ordinance, the following terms shall be defined as follows:

Appraised value means the value given the structure by the applicable County's tax assessor's office.

Building shall mean any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind.

City means the City of Horseshoe Bay, Texas.

City Council means the City Council of the City of Horseshoe Bay.

Diligent effort means best or reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee including a search of the following records:

- (a) County real property records of the county in which the building is located;
- (b) Appraisal District records of the Appraisal District in which the building is located;
- (c) Records of the Secretary of State;
- (d) Assumed name records of the county in which the building is located; and
- (e) City utility records.

Minimum housing standards means those standards found in the City's adopted standard building, electrical, plumbing, gas, mechanical, and fire prevention codes.

Owner means any person, agent, firm or corporation, named in the real property records of the county where the building is located as owning the property.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof.

IV. SUBSTANDARD DECLARATION

Any building or structure requiring repair or demolition, as described and defined herein below shall be, and the same are, hereby declared to be a danger to the public health and welfare, a public nuisance and/or unlawful.

V. INSPECTION

An inspection shall be made of every building located within the City which is suspected of being in violation of this Ordinance. The City's Building Permit Inspector (Inspector) is hereby authorized to conduct inspections of buildings suspected of being in violation of this article and take such actions as may be required to enforce the provisions of this article.

VI. NOTICE OF VIOLATION

- (a) Whenever a violation of this Ordinance has been found by the Inspector, a public hearing by the City Council shall be provided to determine whether the building should be declared a danger to the public health and welfare, a public nuisance and/or unlawful.
- (b) A notice of the hearing shall be sent to the occupant, if any, and record owner/s, lienholder/s or mortgagee/s. Such notice shall be in writing and shall be served by personal delivery or by certified mail, return receipt requested. Notice to the occupant of the property does not require the occupant's name.
- (c) The City shall make a diligent effort to discover each mortgagee and lienholder before issuing notice of the hearing.
- (d) Notice shall be served to all unknown owners, lienholders, or mortgagees, by posting a copy of the notice on the front door of each affected structural improvement situated on the property and as close to the front door as practicable.
- (e) If the owner's address is different than the address shown for the property involved, notice shall be served to the other address of the owner. Service of this notice may be accomplished by the first class U.S. mail or by personal delivery to any occupant of the property who is above the age of eighteen (18) years.
- (f) The notice of hearing shall be filed in the Official Public Records of Real Property in the county in which the property is located.
- (g) The notice shall contain:
 - (1) The name and address of the owner of the property,
 - (2) The names of all persons to whom notice is being served,

- (3) The street address and legal description of the premises,
 - (4) The date of inspection,
 - (5) The nature of the violation,
 - (6) The date, time and location of the hearing, and
 - (7) A statement that the owner, lienholder, or mortgagee will be required to submit at the public hearing proof of the scope of any work that may be required to comply with the City's Building Ordinances and Fire Code and the time it will take to reasonably perform the work.
- (h) After all attempts to notify owners, lien holders and mortgagees under this Ordinance have been made and documented, any refusal to accept or claim hand-delivered, mailed or posted notice will not affect the validity of the notice.

VII. APPLICATION OF STANDARDS

- (a) The following standards shall be utilized in determining whether a building should be ordered repaired or demolished:
- (1) The building or structure is liable to partially or fully collapse.
 - (2) The building or structure was constructed or maintained in violation of any provision of the City's Building Codes, Fire Code or any other applicable ordinance or law of the City, county, state, or federal government.
 - (3) Any wall or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle one-third (1/3) of its base.
 - (4) The foundation or the vertical or horizontal supporting members are twenty-five (25) percent or more damaged or deteriorated.
 - (5) The nonsupporting coverings of walls, ceilings, roofs, or floors are fifty (50) percent or more damaged or deteriorated.
 - (6) The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
 - (7) The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.

(8) The structure does not have adequate light, ventilation, or sanitation facilities as required by the City.

(9) The structure has inadequate facilities for egress in case of fire or other emergency or which has insufficient stairways, elevators, fire escapes or other means of ingress or egress.

(10) The structure, because of its condition, is unsafe, unsanitary, or dangerous to the health, safety or general welfare of the City's citizens including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects reasonably calculated to spread disease.

(11) The structure has been found to contain molds which are known to be harmful to humans, and that remediation of such mold contamination would exceed fifty (50) percent of the value of the structure.

VIII. HEARING

(a) The date of the hearing shall not be less than ten (10) days after notice is made, as described in Section VII.

(b) If at the Public Hearing evidence is provided that the building is in violation of this Ordinance, the City shall require the owner, lienholder, or mortgagee of the building to repair or demolish the building within thirty (30) days, unless it is proven at the hearing that the work cannot reasonably be done in thirty (30) days.

(c) If the City Council allows more than thirty (30) days for the building to be repaired or demolished, the City Council shall establish specific time schedules for the work to be commenced and finished and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.

(d) The City Council shall not allow the owner, lienholder or mortgagee more than ninety (90) days to repair or demolish the building unless a detailed plan and time scheduled for the work are submitted at the hearing and it is proven at the hearing that the work cannot reasonably be completed within ninety (90) days. Additionally, the owner, lienholder, or mortgagee must submit work progress reports to demonstrate compliance with the time schedule established.

(e) In any case where fifty (50) percent or more of the value or structure is damaged or deteriorated, a building shall be demolished or removed, and in all cases where a structure cannot be repaired so that it will no longer exist in violation of the provisions of this Ordinance, it shall be demolished or removed.

IX. APPEAL

In accordance with Section 214.0012 of the Local Government Code, the owner, lien holder, or mortgagee shall have the right to appeal the decision made at the hearing to a district court. A notice of appeal must be filed with the district court within thirty (30) calendar days from the date the order is mailed to the owner, lien holder or mortgagee, as provided herein.

X. ORDER FOR REPAIR OR DEMOLITION

(a) If the building is ordered to be repaired or demolished, the City shall promptly mail a copy of the order by certified mail, return receipt requested, to the owner of the building and to any lienholder or mortgagee of the building. The City shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or property on which the building is located.

(b) If demolition of the building or structure is ordered, demolition shall not occur until a the Municipal Court Judge has issued a seizure and demolition warrant supported by a probable cause affidavit stating that:

- (1) The City has complied with the procedures set forth in this Ordinance;
- (2) Demolition has been ordered by the City; and
- (3) The time for appeal of the order to District Court has expired and no appeal has been taken or, in the alternative, the order was appealed to District Court but the appeal has been finally resolved in a manner that does not prevent the City from proceeding with demolition.

XI. NOTICE OF REPAIR OR DEMOLITION

Within ten (10) days after the date that the order is issued, the City shall:

- (a) File a copy of the order in the office of the City Secretary; and
- (b) Publish a notice in a newspaper where the building is located stating:
 - (1) The street address or legal description of the property;
 - (2) The date of the hearing;
 - (3) A brief statement indicating the results of the order; and
 - (4) Instructions as to where a complete copy of the order may be obtained.

XII. DEMOLITION AND REPAIR EXPENSES

- (a) Whenever it is discovered upon reinspection that the owner, mortgagee or lienholder has failed to either repair or demolish the building within the allotted time, the City, or its authorized agent, may repair or demolish and remove said building or cause the same to be done and charge the expenses incurred in doing such work or having the same done to the owner of said land.
- (b) If such work is done at the expense of the City, then said expense shall be assessed against any salvage resulting from the demolition of the building and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred, and shall be considered a lien against the property as described in Article XIII.
- (c) For the purposes of this section, any repair, alteration or improvement made to a building by the City will only be to the extent necessary to bring the building into compliance with the City's minimum Building and Fire Code standards and only if the building is a residential building with ten (10) or fewer dwelling units; provided however, the City of Horseshoe Bay may elect to obtain a judicial determination by a decree of a court of competent jurisdiction of the existence, in fact, of a public nuisance in cases contemplated by this Ordinance. Such judicial determination may include any available remedy for the abatement of such a nuisance.

XIII. ASSESSMENT OF LIEN

- (a) When the City incurs expenses to repair or demolish and remove a building under this Ordinance, the City places a lien against the property on which the building is located, unless it is a homestead as protected by the Texas Constitution. The lien arises and attaches to the property when the notice of the lien is recorded and indexed with the County Clerk of Llano or Burnet County, Texas. The notice shall contain:
- (1) The name and address of the owner, if that information can be determined with a reasonable effort;
 - (2) A legal description of the property on which the building was located;
 - (3) The amount of expense incurred by the City;
 - (4) The balance due; and
 - (5) The date on which said work was done or improvements made.
- (b) The City shall have a privileged lien on such lot, lots, or other premises or real estate upon which said building was located, to secure the expenditure so made, which said liens shall be second only to tax liens and liens for street improvements; and said amount shall bear 10% interest from the date such statement was filed. It is further provided that for any such expenditure and interest, as aforesaid, suit may be instituted and recovered, and foreclosure of said lien may be made in the name of the City; and the statement of expenses so made, as

aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or expense.

(c) The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for the expenses.

XIV. PENALTIES FOR VIOLATION

(a) Enforcement

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

(b) Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding one thousand dollars (\$1,000.00), except as may be otherwise expressly provided by state law. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

(c) Civil Remedies

Nothing in this Ordinance shall be construed as preempting or waiving the rights of third parties from instituting any action for remedies against site operators or permittees. Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
- (2) A civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- (3) Other available relief.

XV. LIABILITY

Neither the City nor any authorized agent acting under the terms of this Ordinance shall be liable or have any liability by reason of orders issued or work done in compliance with the terms of this Ordinance.

XVI. EFFECTIVE DATE

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

XVII. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

XVIII. SEVERABILITY

Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

XIX. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

ADOPTED AND APPROVED on this the 27th day of May, 2008 by a vote of the City Council of the City of Horseshoe Bay, Texas.

CITY OF HORSESHOE BAY, TEXAS

Robert W. Lambert, Mayor

Attest:

Teresa L. Moore, City Secretary